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Attorneys for Defendants
AARGON AGENCY, INC. and ARMAND FRIED, ESQ.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

| | | |
|-----------------------------|---|------------------------------------|
| EUGENE GOLDSMITH, et al., | } | CASE NO. 2:16-cv-02066-GMN-NJK |
| Plaintiffs, | | STIPULATED PROTECTIVE ORDER |
| vs. | | |
| AARGON AGENCY, INC., et al, | | |
| Defendants. | } | |

Defendants AARGON AGENCY, INC. and ARMAND FRIED, ESQ. ("Defendants")
and Plaintiffs EUGENE GOLDSMITH, et al., ("Plaintiffs"), through their respective counsel of
record hereby file this Stipulated Protective Order as set forth below.

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following
6 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
7 protections on all disclosures or responses to discovery and that the protection it affords from
8 public disclosure and use extends only to the limited information or items that are entitled to
9 confidential treatment under the applicable legal principles. The parties further acknowledge, as
10 set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file
11 confidential information under seal; Local Rule 10-5 sets forth the procedures that must be
12 followed and the standards that will be applied when a party seeks permission from the court to
file material under seal.

13 2. DEFINITIONS

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
15 information or items under this Order.

16 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how
17 it is generated, stored or maintained) or tangible things that qualify for protection under Federal
Rule of Civil Procedure 26(c).

18 2.3 Counsel (without qualifier): Outside Counsel of Record and House
19 Counsel (as well as their support staff).

20 2.4 Designating Party: a Party or Non-Party that designates information or
21 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

22 2.5 Disclosure or Discovery Material: all items or information, regardless of
23 the medium or manner in which it is generated, stored, or maintained (including, among other
24 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures
25 or responses to discovery in this matter.

26 2.6 Expert: a person with specialized knowledge or experience in a matter
27 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
28 witness or as a consultant in this action.

1 2.7 House Counsel: attorneys who are employees of a party to this action.
2 House Counsel does not include Outside Counsel of Record or any other outside counsel.

3 2.8 Non-Party: any natural person, partnership, corporation, association, or
4 other legal entity not named as a Party to this action.

5 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
6 this action but are retained to represent or advise a party to this action and have appeared in this
7 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
8 that party.

9 2.10 Party: any party to this action, including all of its officers, directors,
10 employees, consultants, retained experts, and Outside Counsel of Record (and their support
11 staffs).

12 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
13 Discovery Material in this action.

14 2.12 Professional Vendors: persons or entities that provide litigation support
15 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
16 organizing, storing, or retrieving data in any form or medium) and their employees and
17 subcontractors.

18 2.13 Protected Material: any Disclosure or Discovery Material that is
19 designated as "CONFIDENTIAL."

20 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
21 from a Producing Party.

22 3. SCOPE

23 The protections conferred by this Stipulation and Order cover not only Protected Material
24 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
25 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
26 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
27 However, the protections conferred by this Stipulation and Order do not cover the following
28 information: (a) any information that is in the public domain at the time of disclosure to a
Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
a result of publication not involving a violation of this Order, including becoming part of the

1 public record through trial or otherwise; and (b) any information known to the Receiving Party
2 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
3 obtained the information lawfully and under no obligation of confidentiality to the Designating
4 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

5 4. DURATION

6 Even after final disposition of this litigation, the confidentiality obligations imposed by
7 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
8 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
9 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
10 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
11 action, including the time limits for filing any motions or applications for extension of time
pursuant to applicable law.

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection.
14 Each Party or Non-Party that designates information or items for protection under this Order
15 must take care to limit any such designation to specific material that qualifies under the
16 appropriate standards. The Designating Party must designate for protection only those parts of
17 material, documents, items, or oral or written communications that qualify – so that other
18 portions of the material, documents, items, or communications for which protection is not
warranted are not swept unjustifiably within the ambit of this Order.

19 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
20 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
21 unnecessarily encumber or retard the case development process or to impose unnecessary
22 expenses and burdens on other parties) expose the Designating Party to sanctions.

23 If it comes to a Designating Party's attention that information or items that it designated
24 for protection do not qualify for protection, that Designating Party must promptly notify all other
25 Parties that it is withdrawing the mistaken designation.
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28

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
2 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
3 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
4 designated before the material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (e.g., paper or electronic documents,
7 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
8 Party affix the legend “CONFIDENTIAL” to each page that contains protected material. If only
9 a portion or portions of the material on a page qualifies for protection, the Producing Party also
10 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
11 margins).

12 A Party or Non-Party that makes original documents or materials available for inspection
13 need not designate them for protection until after the inspecting Party has indicated which
14 material it would like copied and produced. During the inspection and before the designation, all
15 of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the
16 inspecting Party has identified the documents it wants copied and produced, the Producing Party
17 must determine which documents, or portions thereof, qualify for protection under this Order.
18 Then, before producing the specified documents, the Producing Party must affix the
19 “CONFIDENTIAL” legend to each page that contains Protected Material. If only a portion or
20 portions of the material on a page qualifies for protection, the Producing Party also must clearly
21 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

22 (b) for testimony given in deposition or in other pretrial or trial proceedings,
23 that the Designating Party identify on the record, before the close of the deposition, hearing, or
24 other proceeding, all protected testimony.

25 (c) for information produced in some form other than documentary and for
26 any other tangible items, that the Producing Party affix in a prominent place on the exterior of
27 the container or containers in which the information or item is stored the legend
28 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
the Producing Party, to the extent practicable, shall identify the protected portion(s).

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
2 failure to designate qualified information or items does not, standing alone, waive the
3 Designating Party's right to secure protection under this Order for such material. Upon timely
4 correction of a designation, the Receiving Party must make reasonable efforts to assure that the
5 material is treated in accordance with the provisions of this Order.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
8 designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's
9 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
10 economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its
11 right to challenge a confidentiality designation by electing not to mount a challenge promptly
12 after the original designation is disclosed.

13 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
14 resolution process by providing written notice of each designation it is challenging and
15 describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been
16 made, the written notice must recite that the challenge to confidentiality is being made in
17 accordance with this specific paragraph of the Protective Order. The parties shall attempt to
18 resolve each challenge in good faith and must begin the process by conferring directly (in voice
19 to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of
20 service of notice. In conferring, the Challenging Party must explain the basis for its belief that
21 the confidentiality designation was not proper and must give the Designating Party an
22 opportunity to review the designated material, to reconsider the circumstances, and, if no change
23 in designation is offered, to explain the basis for the chosen designation. A Challenging Party
24 may proceed to the next stage of the challenge process only if it has engaged in this meet and
25 confer process first or establishes that the Designating Party is unwilling to participate in the
26 meet and confer process in a timely manner.

27 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
28 court intervention, the Designating Party shall file and serve a motion to retain confidentiality
under Local Rule 7-2 (and in compliance with Local 10-5) and Section 12.3, if applicable) within
21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet

1 and confer process will not resolve their dispute, whichever is earlier. Each such motion must be
2 accompanied by a competent declaration affirming that the movant has complied with the meet
3 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
4 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
5 shall automatically waive the confidentiality designation for each challenged designation. In
6 addition, the Challenging Party may file a motion challenging a confidentiality designation at
7 any time if there is good cause for doing so, including a challenge to the designation of a
8 deposition transcript or any portions thereof. Any motion brought pursuant to this provision must
9 be accompanied by a competent declaration affirming that the movant has complied with the
10 meet and confer requirements imposed by the preceding paragraph.

11 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
12 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
13 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
14 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
15 file a motion to retain confidentiality as described above, all parties shall continue to afford the
16 material in question the level of protection to which it is entitled under the Producing Party's
17 designation until the court rules on the challenge.

18 7. ACCESS TO AND USE OF PROTECTED MATERIAL

19 7.1 Basic Principles. A Receiving Party may use Protected Material that is
20 disclosed or produced by another Party or by a Non-Party in connection with this case only for
21 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
22 disclosed only to the categories of persons and under the conditions described in this Order.

23 When the litigation has been terminated, a Receiving Party must comply with the provisions of
24 section 13 below (FINAL DISPOSITION).

25 Protected Material must be stored and maintained by a Receiving Party at a location and
26 in a secure manner that ensures that access is limited to the persons authorized under this Order.

27 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
28 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
disclose any information or item designated "CONFIDENTIAL" only to:

1 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
2 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
3 information for this litigation and who have signed the "Acknowledgment and Agreement to Be
4 Bound" that is attached hereto as Exhibit A;

5 (b) the officers, directors, and employees (including House Counsel) of the
6 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
7 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

8 (c) Experts (as defined in this Order) of the Receiving Party to whom
9 disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment
10 and Agreement to Be Bound" (Exhibit A);

11 (d) the court and its personnel;

12 (e) court reporters and their staff, professional jury or trial consultants, mock
13 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation
14 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

15 (f) during their depositions, witnesses in the action to whom
16 disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement
17 to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the
18 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected
19 Material must be separately bound by the court reporter and may not be disclosed to anyone
20 except as permitted under this Stipulated Protective Order.

21 (g) the author or recipient of a document containing the information or a
22 custodian or other person who otherwise possessed or knew the information.

23 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN 24 OTHER LITIGATION

25 If a Party is served with a subpoena or a court order issued in other litigation that compels
26 disclosure of any information or items designated in this action as "CONFIDENTIAL," that
27 Party must:

28 (a) promptly notify in writing the Designating Party. Such notification shall
include a copy of the subpoena or court order;

1 (b) promptly notify in writing the party who caused the subpoena or order to
2 issue in the other litigation that some or all of the material covered by the subpoena or order is
3 subject to this Protective Order. Such notification shall include a copy of this Stipulated
4 Protective Order; and

5 (c) cooperate with respect to all reasonable procedures sought to be pursued
6 by the Designating Party whose Protected Material may be affected.

7 If the Designating Party timely seeks a protective order, the Party served with the
8 subpoena or court order shall not produce any information designated in this action as
9 “CONFIDENTIAL” before a determination by the court from which the subpoena or order
10 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party
11 shall bear the burden and expense of seeking protection in that court of its confidential material –
12 and nothing in these provisions should be construed as authorizing or encouraging a Receiving
13 Party in this action to disobey a lawful directive from another court.

14 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
15 IN THIS LITIGATION

16 (a) The terms of this Order are applicable to information produced by a Non-Party in
17 this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in
18 connection with this litigation is protected by the remedies and relief provided by this Order.
19 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
20 additional protections.

21 (b) In the event that a Party is required, by a valid discovery request, to produce a
22 Non-Party’s confidential information in its possession, and the Party is subject to an agreement
23 with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

24 1. promptly notify in writing the Requesting Party and the Non-Party that
25 some or all of the information requested is subject to a confidentiality agreement with a Non-
26 Party;

27 2. promptly provide the Non-Party with a copy of the Stipulated Protective
28 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
the information requested; and

3. make the information requested available for inspection by the Non-Party.

1 (c) If the Non-Party fails to object or seek a protective order from this court within 14
2 days of receiving the notice and accompanying information, the Receiving Party may produce
3 the Non-Party's confidential information responsive to the discovery request. If the Non-Party
4 timely seeks a protective order, the Receiving Party shall not produce any information in its
5 possession or control that is subject to the confidentiality agreement with the Non-Party before a
6 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
7 burden and expense of seeking protection in this court of its Protected Material.

8 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
10 Material to any person or in any circumstance not authorized under this Stipulated Protective
11 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
12 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
13 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
14 made of all the terms of this Order, and (d) request such person or persons to execute the
15 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

16 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
17 OTHERWISE PROTECTED MATERIAL

18 When a Producing Party gives notice to Receiving Parties that certain inadvertently
19 produced material is subject to a claim of privilege or other protection, the obligations of the
20 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
21 provision is not intended to modify whatever procedure may be established in an e-discovery
22 order that provides for production without prior privilege review. Pursuant to Federal Rule of
23 Evidence 502(d) and (e), the parties reach an agreement on the effect of disclosure of a
24 communication or information covered by the attorney-client privilege or work product
25 protection, as follows:

26 If a Designating Party inadvertently discloses information in connection with the pending
27 litigation to another Party that the Designating Party thereafter claims to be privileged or
28 protected by the attorney-client privilege or attorney work product protection ("Disclosed
Protected Information"), the disclosure of the Disclosed Protected Information shall not
constitute or be deemed a waiver or forfeiture of any claim of privilege or work product

1 protection that the Designating Party would otherwise be entitled to assert with respect to the
2 Disclosed Protected Information and its subject matter in this proceeding or in any other federal
3 or state proceeding.

4 A Designating Party may assert in writing attorney-client privilege or work product
5 protection with respect to Disclosed Protected Information. The Receiving Party must—unless
6 it contests the claim of attorney-client privilege or work product protection in accordance with
7 sub-paragraph (c)—within five business days of receipt of that writing, (i) return or destroy all
8 copies of the Disclosed Protected Information, and (ii) provide a certification of counsel that all
9 of the Disclosed Protected Information has been returned or destroyed. Within five business
10 days after assertion of attorney-client privilege or work product protection with respect to
11 Disclosed Protected Information, the Designating Party must produce a privilege log with
12 respect to the Disclosed Protected Information.

12 12. MISCELLANEOUS

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
14 person to seek its modification by the court in the future.

15 12.2 Right to Assert Other Objections. By stipulating to the entry of this
16 Protective Order no Party waives any right it otherwise would have to object to disclosing or
17 producing any information or item on any ground not addressed in this Stipulated Protective
18 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
19 the material covered by this Protective Order.

20 12.3 Filing Protected Material. Without written permission from the
21 Designating Party or a court order secured after appropriate notice to all interested persons, a
22 Party may not file in the public record in this action any Protected Material. A Party that seeks to
23 file under seal any Protected Material must comply with Local Rule 10-5. Protected Material
24 may only be filed under seal pursuant to a court order authorizing the sealing of the specific
25 Protected Material at issue.

26 Any motion for leave to file a document under seal shall set forth with particularity the
27 basis for sealing under *Kamakana v. Honolulu*, 447 F.3d 1172 (9th Cir. 2006), and fully comply
28 with the procedure set forth in Civil Local Rule 10-5.

1 If a Receiving Party's request to file Protected Material under seal pursuant to Local Rule
2 10-5 is denied by the court, then the Receiving Party may file the information in the public
3 record unless otherwise instructed by the court.

4 13. FINAL DISPOSITION. Within 60 days after the final disposition of this action,
5 as defined in paragraph 4, each Receiving Party must return all Protected Material to the
6 Producing Party or destroy such material. As used in this subdivision, "all Protected Material"
7 includes all copies, abstracts, compilations, summaries, and any other format reproducing or
8 capturing any of the Protected Material. Whether the Protected Material is returned or
9 destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if
10 not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
11 (by category, where appropriate) all the Protected Material that was returned or destroyed and
12 (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations,
13 summaries or any other format reproducing or capturing any of the Protected Material.
14 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings,
15 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
16 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
17 work product, even if such materials contain Protected Material. Any such archival copies that
18 contain or constitute Protected Material remain subject to this Protective Order as set forth in
19 Section 4 (DURATION).

20 This Order is subject to further court orders based upon public policy and other
21 considerations. This Court may modify this Order sua sponte in the interest of justice.

22 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

23 Dated: October 24, 2017

CARLSON & MESSER LLP

24
25 s/ Stephen A. Watkins, Esq.
26 Stephen A. Watkins, Esq. (*Pro Hac Vice*)
27 Cal. Bar No. 205175
28 9841 Airport Boulevard, Suite 1200
Los Angeles, California 90045
Attorneys for Defendants

1 Dated: October 24, 2017

LAW OFFICE OF VERNON NELSON

3 s/ Vernon Nelson, Esq. _____

4 Vernon Nelson, Esq.

5 Bar No. 6434

9480 South Eastern Avenue

Suite 252

Las Vegas, NV 89123

Attorneys for Plaintiffs

7 IT IS SO ORDERED:

8 Dated: October 25, 2017

10 
11 _____
United States Magistrate Judge

EXHIBIT A - ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and
understand the Stipulated Protective Order that was issued by the United States District Court for
the District of Nevada on [_____] in the case of *Eugene Goldsmith et al. v. Aargon Agency,
Inc. et al.*, Case No. 2:16-cv-02066-GMN-NJK.

I agree to comply with and to be bound by all the terms of this Stipulated Protective
Order and I understand and acknowledge that failure to so comply could expose me to sanctions
and punishment in the nature of contempt. I solemnly promise that I will not disclose in any
manner any information or item that is subject to this Stipulated Protective Order to any person
or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
District of Nevada for the purpose of enforcing the terms of this Stipulated Protective Order,
even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone
number] as my Nevada agent for service of process in connection with this action or any
proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]